

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

CHRISTOPHER LEE CHAFIN,

Plaintiff,

v.

Civil Action No. 2:16-cv-05127

WEST VIRGINIA DIVISION OF JUVENILE SERVICES,
WEST VIRGINIA INDUSTRIAL HOME FOR YOUTH, and
UNKNOWN OFFICERS WHO WORKED AT
WEST VIRGINIA INDUSTRIAL HOME FOR YOUTH,

Defendants.

ORDER

Pending is the motion to dismiss filed by the West Virginia Division of Juvenile Services ("WVDJS") and the West Virginia Industrial Home for Youth ("WVIHY") on June 22, 2017.

Defendants assert that this action, alleging physical and sexual abuse of the plaintiff when he was a minor, is time-barred and that WVDJS and WVIHY are arms of the State of West Virginia and, as such, are not suable entities under 42 U.S.C. § 1983 and are immune from a suit for damages in federal court under the Eleventh Amendment of the United States Constitution. Plaintiff counters that he had suppressed memories of the abuse

and that a delayed discovery rule should be applied to the statute of limitations.

This matter having been referred to United States Magistrate Judge Dwane L. Tinsley pursuant to 28 U.S.C. § 636(b)(1)(B), he filed his Proposed Findings and Recommendation ("PF&R") on January 25, 2018. Magistrate Judge Tinsley finds persuasive the sovereign immunity and suability arguments of the institutional defendants but considers that further factual development is needed to determine the applicability of the statute of limitations defense as to the unknown individual defendants. Accordingly, the magistrate judge recommends that the motion to dismiss be granted and that the matter continue to be referred to him for further proceedings concerning the claims against the unknown defendants.

No objections having been filed to the PF&R, the parties have waived de novo review by this court. Accordingly, it is ordered as follows:

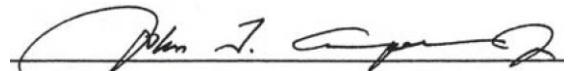
1. That the PF&R be, and it hereby is, adopted and incorporated in full herein.
2. That the motion to dismiss by defendants West Virginia Division of Juvenile Services and West

Virginia Industrial Home for Youth be, and it hereby is, granted.

3. That the West Virginia Division of Juvenile Services and the West Virginia Industrial Home for Youth be, and they hereby are, dismissed from this action.

The matter continues to be referred to Magistrate Judge Tinsley for further proceedings as to the unknown individual defendants. The Clerk is requested to transmit copies of this order to plaintiff, all counsel of record, and United States Magistrate Judge Dwane L. Tinsley.

DATED: February 28, 2018

A handwritten signature in black ink, appearing to read "John T. Copenhaver, Jr.", written over a horizontal line.

John T. Copenhaver, Jr.
United States District Judge